

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

GEORGE ZOURKAS, <div style="text-align: center;">Plaintiff</div>)	Civil No. <u>5:20-cv-5069</u>
vs.)	COMPLAINT
JASON AARON PETERS and KRULL FOODS OF HC, INC., <div style="text-align: center;">Defendants</div>)	

COMES NOW the Plaintiff, by and through his attorney, Terence R. Quinn of The Quinn Law Firm, Rapid City, South Dakota, and for his causes of action against Defendants, states and alleges as follows:

PARTIES

1. At all times material hereto Plaintiff George Zourkas (hereinafter "Plaintiff") was a resident and citizen of Illinois, residing in Niles, Cook County, Illinois.
2. At all times material hereto the Defendant Krull Foods of HC, Inc., (hereinafter "Defendant Krull") was a South Dakota company, registered with the South Dakota Secretary of State to do business in South Dakota. The principal place of business for Defendant Krull is 111 Ponderosa Ave., Hill City, South Dakota 57745.
3. Upon information and belief, at all times material hereto the Defendant Jason Aaron Peters (hereinafter "Defendant Peters") was a resident and citizen of South Dakota, residing in Hill City, Pennington County, South Dakota.
4. At all times material hereto, Defendant Peters was an employee and/or officer of Defendant Krull, and operating in his capacity as such.

JURISDICTION AND VENUE

5. This is an action for damages in excess of the Federal District Court's minimal jurisdictional limits of \$75,000.00 as set forth in 28 USC § 1332(a)(1).
6. This action is properly filed in Federal District Court due to diversity of citizenship between Plaintiff and Defendants, as requires by 28 USC § 1332(a)(1).
7. Venue is proper in this District under 28 USC § 1391(a) because all or most of the events or omissions giving rise to Plaintiff's claim occurred in this District.

FACTS

8. On or about the 9th day of August, 2018, both Plaintiff and Defendant Peters were operating motor vehicles at or near the intersection of US Highway 16 and Poplar St in the city of Hill City, Pennington County, South Dakota. Plaintiff was driving a 2007 Harley Davidson while Defendant Peters was driving a 2016 Ford 350 pickup owned by Defendant Krull.
9. At or just prior to a crash between the named parties, Defendant Peters was traveling eastbound on US Highway 16 in Hill City, South Dakota, while Plaintiff was traveling westbound on US Highway 16.
10. As said vehicles approached the intersection of Poplar St. and US Highway 16, Defendant Peters negligently, carelessly, and recklessly executed a left hand turn into the path of Plaintiff's motorcycle causing said motorcycle to crash into the rear quarter of Defendants' pickup.
11. Due to the negligence, carelessness and reckless operation of Defendant Peters, Plaintiff suffered severe and permanent bodily injury and disfigurement. In addition to such

injury, Plaintiff has incurred and will continue to incur doctor, hospital, physical therapy, travel and numerous other costs and expenses all exceeding \$150,000.00.

12. At all times material hereto, Plaintiff was operating his motorcycle in a careful and appropriate manner. When Defendant Peters turned in front of him, Plaintiff was forced to lay his motorcycle down causing it and his body to scrape along the cement roadway causing serious and permanent bodily injury.

Count I
Negligence of Defendant Kirst

13. Plaintiff hereby incorporates by reference the preceding twelve (12) paragraphs as if set forth fully.

14. Defendant Peters operated his vehicle in a negligent, careless, and unlawful manner, including but not limited to:

- a. Careless driving;
- b. Failing to keep a proper lookout;
- c. Failing to yield the right-of-way; and
- d. Defendant Peters was otherwise negligent.

15. As a result of the negligent acts of Defendant Peters, the vehicles collided, causing severe injuries to Plaintiff, who was at all times acting in accordance with state law.

16. Defendant Peters' negligent acts were the proximate cause of the collision of the two vehicles.

17. Defendant Peters' negligent acts were the legal cause of the collision of the two vehicles.

18. Similarly, Defendant Peters' acts as herein set forth were in direct violation of South Dakota law and Defendant Peters is therefore negligent as a matter of law. Such negligence is the direct and proximate cause of the damages suffered by Plaintiff.
19. As a direct and proximate cause of Defendant Peters' negligence, Plaintiff has suffered mental and physical injury and pain; has suffered and will suffer for the remainder of his life a permanent impairment which restricts him from participating in the normal activities of life; has suffered diminished capacity to enjoy life; and has incurred medical expenses and will continue in the future to incur medical expenses.
20. As a direct and proximate cause of Defendant Peters' negligence, Plaintiff has suffered a loss of past and future income.

Count II
Negligence of Defendant Krull/Respondeat Superior

21. Plaintiff hereby incorporates by reference the preceding twenty (20) paragraphs as if set forth fully.
22. Defendant Krull is vicariously liable for the acts of its employee/officer, Defendant Peters, taken within the course and scope of his employment.
23. At all times material herein, Defendant Peters was acting within the course and scope of his employment with Defendant Krull.
24. As part of his ordinary employment duties, Defendant Peters was driving on behalf of his employer.
25. Defendant Krull's vehicle, driven by Defendant Peters, collided with Plaintiff's vehicle, causing severe injuries to Plaintiff.
26. Plaintiff was at all times acting in accordance with state law.

27. On information and belief, the conduct of Defendant Peters was consistent with the type of work he was employed by Defendant Krull to perform.

28. The negligence of Defendant Peters occurred within the authorized time and space of his employment duties.

29. Defendant Peters' acts as herein set forth were in direct violation of South Dakota law and Defendants are therefore negligent as a matter of law.

30. Because Defendant Peters was working within the scope of his employment at the time of the accident, his negligence is imputable to Defendant Krull. Such negligence is the direct and proximate cause of the damages suffered by Plaintiff.

31. Defendant Krull is liable for the damages directly and proximately caused to Plaintiff by Defendant Peters' negligence. Plaintiff has suffered mental and physical injury and pain; has suffered and will suffer for the remainder of his life a permanent impairment which restricts him from participating in the normal activities of life; has suffered diminished capacity to enjoy life; and has incurred medical expenses and will continue in the future to incur medical expenses.

32. In addition, as a direct and proximate cause of Defendants' negligence, Plaintiff has suffered a loss of past and future income.

WHEREFORE, Plaintiff respectfully prays for judgment in his favor and against Defendants and the following relief:

A. Plaintiff seeks an award in excess of this Court's minimum jurisdictional limits of \$75,000.00 exclusive of interest in costs;

- B. Compensatory damages, including but not limited to compensation for the costs of Plaintiff's past and future medical care, loss of future earnings, past and future pain, emotional distress and mental anguish caused by Defendants;
- C. Pre-judgment and post-judgment interest as allowed; and
- D. Such other and further relief as this Court deems equitable.

Dated this 4 day of November, 2020.

THE QUINN LAW FIRM

BY: 

Terence R. Quinn (1411)
3620 Homestead St.
Rapid City, SD 57703
(605) 519-8623
Quinnlaw.tq@gmail.com

ATTORNEY FOR PLAINTIFF

PLAINTIFF REQUESTS TRIAL BY JURY

BY: 

Terence R. Quinn

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

GEORGE ZOURKAS

(b) County of Residence of First Listed Plaintiff COOK
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

TERRY QUINN, THE QUINN LAW FIRM, 3620
HOMESTEAD ST., RAPID CITY, SD 57703

DEFENDANTS

JASON AARON PETERS and KRULL FOODS OF HC, INC.

County of Residence of First Listed Defendant PENNINGTON
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)[Click here for: Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332(a)(1)

Brief description of cause:
AUTO ACCIDENT WITH DAMAGES IN EXCESS OF \$75,000.00

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

Nov 19, 2020

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____